UNITED MALAYAN BANKING CORP. BHD.

v.

PEMUNGUT HASIL TANAH, KOTA TINGGI & ANOTHER CASE

PRIVY COUNCIL
LORD KEITH OF KINKEL
LORD BRIDGE OF HARWICH
LORD BRANDON OF OAKBROOK
LORD TEMPLEMAN
ROBIN COOKE
[APPEAL NOS. 39 & 40 OF 1982]
9 JULY 1984

LAND LAW: *Forfeiture of alienated land - Relief against such forfeiture - Validity of notice of forfeiture - Jurisdiction of Courts - Non-payment of rent and penalty - Equitable rules of English law - Whether applicable to forfeiture of alienated land.*

The State Authority of Johore alienated to the second appellants in 1966 approximately 20,680 acres of land in the district of Kota Tinggi for a term of 99 years in consideration of a stipulated annual rent and other conditions. Considerable sums of money were expended by the second appellants in developing the said land for the purposes of a sugar plantation. They had also granted a number of charges over the land in favour of the first appellants.

In 1977 the rent payable by the second appellants was RM124,080 plus education rate of RM31,020. The amount fell due on 1 January 1977 and as it was not paid before 1 June 1977 it became an arrear. On 2 June 1977 the Collector of Land Revenue, caused to be served on the second appellants a notice of demand, a copy of which was also served on the first appellants as chargees. The notice required payments of the rent with penalties within a period of six months. Owing to misunderstandings between the parties neither rent nor penalties were paid by either of them within the period.

On 7 September 1977 the Collector (the respondent in this appeal) made an order declaring the land forfeit to the State Authority. On 7 and 14 December 1977 respectively the appellants instituted proceedings by motion under s. 418 of the National Land Code 1965 ("the Code"). The High Court gave judgment in favour of the appellants granting relief against forfeiture. On appeal by the respondent, the Federal Court allowed the appeal. Therefore these consolidated appeals by the appellants, raising issues on the validity of a notice of forfeiture of alienated land; and the jurisdiction of the Courts to grant relief against such forfeiture.

The appellants contended that the sum demanded in the notice was excessive and that the notice was therefore invalid. They raised the question whether the equitable rules of English law dealing with relief against forfeiture, have any application to forfeiture of alienated land duly brought about under the Code.

Held:

[1] No developed argument was heard as to whether and to what extent the *de minimis* principle may apply to demands of excessive monetary amounts and since it was unnecessary to do otherwise, the Board's opinion was reserved.

[2] The relevant provisions of the Code evince an intention that the English rules of equity relating to relief against forfeiture should not be available to proprietors of alienated land. Section 3(1) of the Civil Law Act 1956 cannot avail the appellants, as these provisions are inconsistent with the rules in question.

a *[Appeals dismissed with costs.]*

Case referred to:
Zainal bin Hashim v. Government of Malaysia [1980] AC 734

Legislation referred to:
Civil Law Act 1956, ss. 3(1), 6
b National Land Code Act 56/1965, ss. 5, 14, 76, 94(2), 97, (1), 98, 99, 100, 134(1), (2), (3), 418, (2)

For the 1st appellants - Stuart Mckinnon QC (Chin Yew Meng with him)
For the 2nd appellants - John Stuart Colyer QC (P.S. Gill & Jeyaratnam with him)
For the respondent - Stewart Bates QC (Stephen Allcock with him)

JUDGMENT

c **Lord Keith of Kinkel:**

These consolidated appeals from the Federal Court of Malaysia raise issues regarding the validity of a notice of forfeiture of alienated land issued under the relevant provisions of the National Land Code 1965 ("the Code"), and also regarding the jurisdiction of the Courts to grant relief against such forfeiture.

d In December 1966 the State Authority of Johore alienated to the second appellants, under s. 76 of the Code, approximately 20,680 acres of land in the district of Kota Tinggi for a term of 99 years in consideration of a stipulated annual rent and other conditions. The second appellants laid out very considerable sums of money in the development of the land for the purposes of a sugar plantation, and they also granted a number of charges over the land in favour of the first appellants, for the purpose of securing the repayment of loans which in *e* November 1977 amounted to RM5,334,163.60 with interest.

The rent payable by the second appellants in respect of the year 1977 was RM124,080 plus education rate of RM31,020. By virtue of s. 94(2) of the Code that rent fell due on 1 January 1977, and, not having been paid before 1 June 1977, fell to be treated as having become in arrear on that date. Accordingly, the Collector of Land Revenue for the District, pursuant to s. 97(1) of the Code, on 2 June 1977 caused to be served on the second appellants a notice *f* of demand in terms of Form 6A in the first Schedule thereto. As required by s. 98 the Collector also served a copy of the notice on the first appellants as chargees, so as to give them the opportunity of paying the rent themselves if they chose. The notice required payment of the rent together with penalties within the period of three months. Owing to misunderstandings between the appellants, neither rent nor penalties were paid by either of them within that period. Sections 99 and 100 of the Code provide as follows:-

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> 99. If the whole of the sum demanded by any notice under s. 97 is tendered to the Collector within the time specified therein, the notice shall thereupon cease to have effect, and the Collector shall cancel, or cause to be cancelled, the note endorsed pursuant to sub-section (2) of that section on the register document of title to the land to which the notice related.
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> 100. The Collector shall not during the period specified in any notice under s. 97 accept the *h* tender by or on behalf of any person or body of a lesser amount than the sum thereby demanded; and if by the end of that period the whole of that sum has not been tendered to him, he shall thereupon by order declare the land forfeit to the State Authority, and the provisions of Part Eight shall have effect with respect thereto accordingly.

On 7 September 1977 the Collector, who is the respondent to the appeals, made an order declaring the land forfeit to the State Authority, and this order, as required by s. 130(1), was *i* published in the *Gazette* on 15 September 1977.

On 7 and 14 December 1977 respectively the appellants instituted proceedings by motion under s. 418 of the Code, which provides:

> 418. (1) Any person or body aggrieved by any decision under this Act of the State Commissioner, the Registrar or any Collector may, at any time within the period of three months beginning with the date on which it was communicated to him, appeal therefrom to the Court.
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> (2) Any such appeal shall be made in accordance with the provisions of any written law for the time being in force relating to civil procedure; and the Court shall make such order thereon as it considers just.
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> (3) In this section "decision" includes any act, omission, refusal, direction or order.

The motions were heard by Tan Sri S.S. Gill CJ, Malaya, in the High Court, and on 6 March 1979 he gave judgment in favour of the appellants granting relief against forfeiture. The respondent appealed to the Federal Court, and on 25 August 1981 that Court (Wan Suleiman and Salleh Abas FJJ and Abdoolcader J) gave judgment allowing the appeal. The appellants' appeal to the Yang di-Pertuan Agong now comes before this Board.

The first issue in the appeal arises out of a contention by the appellants that the sum demanded in the notice dated 2 June 1977 was excessive and that the notice was therefore invalid. The elements making up the sum thereby demanded were quit rent RM124,080, education rate RM31,020, fees etc., chargeable as rent RM31,020 and arrears fee RM5 - a total of RM186,125. It is to be observed that the last two items have been entered under the wrong heading. Clearly the RM31,020 is an arrears fee and the RM5 is a fee chargeable as rent. Under s. 5 of the Code "rent" includes any fee due to the State Authority by virtue of rules made under s. 14. By virtue of r. 16 and Table III of such rules made in 1966 (JPU 39 of 1966) as amended by further rules of 1976 (JPU 6 of 1976) there was payable an arrears fee of 20% of the amount due where that exceeded RM50. In the Courts below the appellants maintained that this fee was to be calculated only upon the amount of quit rent due, exclusive of the education rate. On that basis, the amount demanded under this head would have been about RM6,000 in excess of that legally due. This particular contention was abandoned before the Board. The appellants did, however, renew a different contention based on the amount of RM5 demanded by way of "arrears fee", maintaining that this should have been only RM2. Rule 17 of JPU 39 of 1966 provides:

> Whenever a Notice of Demand in Form 6A is issued a notice fee of RM2 shall be payable in addition to the arrears fee prescribed in r. 16 and Table III.

Rule 20 under the heading "Office Fees" provides:

> The fees prescribed for various proceedings are as specified in Table V.

Table V item 15 is in these terms:

> Notice in Form 6A of Land Code - RM2.

Rule 2 of JPU 6 of 1976 amended the 1966 rules *inter alia* by deleting the whole of Table V and substituting a new one which included an item 17 in these terms:

> Notice in Form 6A of Land Code - RM5.

Rule 17 of the 1966 rules was not then amended, but r. 2 of the Amendment Rules of 1979 (JPU 63 of 1979), which Counsel for the appellants very properly drew to the attention of the Board, substituted a new r. 17 in these terms:

> 17. Whenever a Notice of Demand in Form 6A is issued a fee under item 17 of Table V shall be payable in addition of (sic) the arrears fee prescribed in r. 16 and Table III.

Rule 1 of these Amendment Rules provided that they should be deemed to have come into force on 19 February 1976.

It is a possible construction of rr. 17 and 20 and item 15 of Table V of the 1966 rules that they provided for two fees each of RM2 to be payable on the issue of a Form 6A notice, and it would follow that the item 15 fee, but not the r. 17 fee, was increased to RM5 by the 1976 amending rules. But that is not a likely or reasonable result, and in their Lordships' opinion it is clear that the intention of r. 17 was to provide that whenever a Form 6A notice was issued there should be payable, in addition to the arrears fee, the office fee of RM2 provided by r. 20 and item 15 of Table V. In that situation the relevant amendment of Table V, brought about by the 1976 rules, by necessary implication amended r. 17 by increasing the RM2 there mentioned to RM5. In so far, however, as there might be any doubt about this, the amending rules of 1979 were clearly designed to remove such doubt with an effect retrospective to the date when the 1976 rules came into force. Though Counsel for the appellants sought valiantly to argue that the terms of r. 1 of the 1979 rules did not express with sufficient clarity an intention that the amendment brought about by r. 2 should affect a pending litigation, such as this one, their Lordships regard the conclusion that it did so as being truly inescapable. (See *Zainal bin Hashim v. Government of Malaysia* [1980] AC 734, per Viscount Dilhorne at pp. 742, 743).

It follows that the fee of RM5 demanded by the Form 6A notice in this case was of the correct amount, so that there is no basis for the attack on the validity of the notice. But since both the Courts below dismissed the attack on the validity of the notice on the ground that, assuming that not only an excessive notice fee but also an arrears fee RM6,000 in excess of the correct amount had been demanded, this constituted no more than an irregularity in the form of the notice which was not of a significant nature, it is necessary to say a few words on that aspect.

The matter arises under s. 134(2) of the Code which provides:

> 134. (2) No order of the Collector under s. 100 or 129 shall be set aside by any Court except upon the grounds of its having been made contrary to the provisions of this Act, or of there having been a failure on the part of the Collector to comply with the requirements of any such provision; and no such order shall be set aside by reason only of any irregularity in the form or service of any notice under Chapter 2 of Part Six or, as the case may be, Chapter 5 of Part Seven unless, in the opinion of the Court, the irregularity was of a significant nature.

It is plain that a demand which is excessive in amount, whether in respect of arrears fee or notice fee or both, cannot be an irregularity of service. Nor, in their Lordships' opinion, can it properly be regarded as an irregularity in form. The sum of money demanded in such a notice is clearly a matter of substance. By virtue of ss. 99 and 100 of the Code, the whole of the sum demanded under s. 97 must be tendered, the Collector is prohibited from accepting a tender of any lesser amount, and if the whole amount is not tendered he has no option but to declare the land forfeit. This is a very savage provision, and their Lordships are of the clear opinion that a procedure designed to lead to such draconian consequences must be followed out strictly and to the letter, (subject only to such irregularities in form or service as are not of a significant nature), under sanction that the notice of forfeiture will otherwise be held invalid. Their Lordships heard no developed argument as to whether and to what extent the *de minimis* principle may apply to demands of excessive monetary amount, and since it is unnecessary to do otherwise for the purpose of determining the appeals they prefer to reserve their opinion on that matter.

The second issue in the appeal is concerned with the question whether those equitable rules of English law which have to do with relief against forfeiture have any application to forfeiture of alienated land duly brought about under the Code.

It was argued for the appellants that the provisions of s. 418 of the Code (quoted above) recognised the existence of a jurisdiction to grant relief in accordance with these equitable rules because by sub-section (2) the Court was empowered on any appeal to make such order "as it considers just". This must mean, however, any order considered to be just having regard to the substantive law, written or unwritten. So it is necessary to examine the relevant substantive law to see whether or not it admits of the equitable jurisdiction contended for.

Section 134 of the Code deals with appeals against forfeiture. Sub-section (2) has already been quoted. Sub-section (1) is in these terms:

> The validity of any forfeiture under this Act shall not be challenged in any Court except by means of, or in proceedings consequent upon, an appeal under s. 418 against the order of the Collector under s. 100 or, as the case may be, 129; and, notwithstanding anything in any other written law, no such appeal shall be commenced after the expiry of the period of three months allowed for the bringing thereof by the said s. 418.

Counsel for the appellants maintained that this section was concerned only with challenges to the validity of a forfeiture of alienated land, not with applications for equitable relief against a forfeiture admitted or held to be valid. Accordingly, sub-section (2) did not apply so as to exclude such an application. Their Lordships are of opinion that the granting of an application for relief against forfeiture would, consistently with the ordinary use of language, constitute the "setting aside" of the order for forfeiture within the meaning of sub-section (2). Further, there are other provisions of the Code which are, in their Lordships' view, quite inconsistent with the existence of any jurisdiction in the Court to grant relief against forfeiture of alienated land. Section 133 makes provision for any proprietor of alienated land who has incurred a forfeiture to apply to the State Authority for annulment of it, and gives the Authority absolute discretion to refuse the application or to allow it conditionally or unconditionally.

Under sub-section (3) the Authority may, notwithstanding such refusal, realienate the land to the same proprietor upon such terms as it may determine. These provisions evince an intention that the Authority should have complete control over whether or not a proprietor who has incurred forfeiture should be reinstated, and if so upon what terms. Then s. 237 provides for application to the Court for relief against forfeiture by lessees and others whose tenure is exempt from registration. The absence of any similar provision in favour of proprietors of alienated land is a strong indication of an intention that in their case no such right of application was to be available. This argument for the appellants must therefore be rejected.

It was further argued for the appellants that the English rules regarding relief against forfeiture were imported generally into the law prevailing in Johore by s. 3(1) of the Civil Law Act 1956 which, so far as material, provides:

> 3.(1) Save so far as other provision has been made or may hereafter be made by any written law in force in Malaysia, the Court shall -
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> (a) in West Malaysia or any part thereof, apply the common law of England and the rules of equity as administered in England on the 7th day of April 1956.

For the reasons already given, their Lordships are of opinion that the relevant provisions of the Code evince an intention that the English rules of equity relating to relief against forfeiture should not be available to proprietors of alienated land. Section 3(1) of the 1956 Act cannot therefore avail the appellants, since these provisions are inconsistent with the rules in question.

It is necessary to notice finally s. 6 of the Civil Law Act 1956 which provides:

> Nothing in this Part shall be taken to introduce into Malaysia or any of the States comprised therein any part of the law of England relating to the tenure or conveyance or assurance of or succession to any immovable property or any estate, right or interest therein.

It was argued for the appellants that this enactment did not preclude the application of the English equitable rules as to relief against forfeiture since these rules were not part of the law of England relating to the tenure of immovable property. "Tenure", so it was maintained, meant only the mode of holding land, and the rules of equity were something different. But, in their Lordships opinion, laws relating to the tenure of land must, applying the ordinary and natural meaning of these words, embrace all rules of law which govern the incidents of the tenure of land, and among these incidents is the right, in appropriate circumstances, to the grant of relief against forfeiture. The National Land Code is a complete and comprehensive code of law governing the tenure of land in Malaysia and the incidents of it, as well as other important matters affecting land there, and there is no room for the importation of any rules of English law in that field except in so far as the Code itself may expressly provide for this.

For these reasons their Lordships will advise His Majesty the Yang di-Pertuan Agong that the appeals should be dismissed with costs.

Also found at [1984] 2 CLJ 146